

### **REMARKS/ARGUMENTS**

Claims 1-37 are pending in the application. Claims 6, 7, 24, and 25 were previously withdrawn from further consideration pursuant to the Examiner's requirement for restriction.

Claims 1-5, 8-23, and 26-37 stand rejected.

Any amendment to the claims which has been made in this Amendment and Response, and which has not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto. Reconsideration and reexamination of the application is respectfully requested in view of the following remarks.

#### **Rejection Under 35 U.S.C. §103(a)**

Claims 1-5, 8-23, and 26-37 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 4,593,878 to Stewart in view of U.S. Patent No. 5,667,896 to Carter et al. The rejection is traversed.

Stewart '878 discloses a rear view mirror assembly attached to a vehicle windshield. An intermediate plate 44 is interposed between a mirror element 24, or a bracket assembly 38 supporting the mirror element 24, and a windshield 40. The plate 44 is provided with a plurality of apertures that encase pins 46 extending from a bonding layer 48 adhering to the windshield 40. The plate 44 is attached to the mirror element 24 or bracket assembly 38. Preferably, the bonding layer 48 and pins 46 comprise a material which can flow into the apertures when in a liquid state to form the pins 46 and adhere to the windshield 40 when hardened. A shear force applied to the mirror assembly in a plane parallel to the plane of the bonding layer will fracture the pins 46 where they meet the bonding layer 48, thereby enabling the mirror element 24 or bracket assembly 38 to separate from the windshield 40.

Carter '896 discloses an automotive glass sunroof from which a storage compartment 42 is suspended along the perimeter of the sunroof glass panel 28. The storage compartment 42 can be attached to the panel 28 by a tape marketed by 3M Company under the trademark DUAL LOCK™. The tape comprises two strips 76, 78, each having a plurality of pins 80 having semi-spherical heads 82 which interlock to hold the strips 76, 78 together. A straight pull or tension will not cause the two strips of tape to separate. In order to separate the strips, one strip must be peeled away from the other to cause the spherical heads 82 to rotate. *Carter '896, col. 5, ln. 51-57.*

To establish a *prima facie* case of obviousness, several basic criteria must be met. Under *Graham v. John Deere*, 383 U.S. 1 (1966), it is necessary to 1) determine the scope and content of the prior art; 2) ascertain the differences between the prior art and the claims at issue; 3) resolve the level of ordinary skill in the pertinent art; and 4) evaluate evidence of secondary consideration. Additionally, the obviousness evaluation will be informed by a showing of teaching, suggestion, or motivation that would lead a person of ordinary skill in the art to combine the prior art to meet the claimed subject matter, although a rigid application of this showing is not required. The obviousness analysis must be explicit, and it is necessary to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. \_\_; 127 S. Ct 1727; 82 U.S.P.Q.2d (BNA) 1385 (2007).

The analysis of whether there was an apparent reason to combine known elements in the fashion claimed should be made explicit. In formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed. *May 3, 2007 Memorandum from Margaret A. Focarino, Deputy Commissioner for Patent Operations, to Technology Center Directors.*

The Examiner asserts that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the interlocking fastener assembly of Stewart to

include a similar interlocking assembly including first and second arrays having identical configurations wherein the first and second arrays includes a regularly-spaced plurality of fastening elements wherein each fastening element comprises an elongated cylindrical shaft terminating in an expanded, mushroom-shaped head, as taught by Carter et al, in order to similarly attach said reflective element assembly to said mounting bracket.” This assertion is wholly inadequate to support the combination.

First, the motivation behind the invention disclosed in Stewart ‘878 is to enable a mirror to be relatively permanently attached to a windshield, while enabling the mirror to break away from the windshield in the event of a collision with the mirror, thereby enhancing the safety of the mirror. *Stewart ‘878, col. 1, ln. 37-65*. This is accomplished by pins which can shear upon the application of a sufficiently high force transverse to the longitudinal axes of the pins. There would be no reason to incorporate a different connecting system into the shear pin system disclosed in Stewart ‘878. The system of Stewart ‘878 presumably performs perfectly well and requires no modification.

There is nothing in Carter ‘896 to even suggest that the interlocking pins would separate upon the application of a force transverse to the longitudinal axes of the pins, which is a fundamental requirement of the pins in Stewart ‘878. The only separation mechanism mentioned in Carter ‘896 is a peeling separation, which is inapplicable to the Stewart ‘878 system. A straight pull or tension separation is deemed by Carter ‘896 to be impossible. There is no other discussion of the separation of the interlocking pins.

The Examiner’s rationale is that the combination of Carter ‘896 with Stewart ‘878 would “similarly attach” the reflective element assembly of Stewart ‘878 to the mounting bracket of Stewart ‘878. This is a completely inadequate justification. Just because the Carter ‘896 fastener system could be used in the Stewart ‘878 assembly does not make the combination obvious. It makes the combination an exercise in hindsight reconstruction of Applicants’ invention, using Applicants’ disclosure as a blueprint.

What renders the Examiner's rationale flawed, however, is that the combination of Carter '896 with Stewart '878 would not "similarly attach" the reflective element assembly of Stewart '878 to the mounting bracket of Stewart '878. As discussed above, the joining of the reflective element assembly to the mounting bracket in Stewart '878 is done in such a manner as to enable the separation of these two structural elements upon the application of a sufficient shear force, which shears the pins holding the reflective element assembly to the mounting bracket. This mechanism is not provided by the Carter '896 interlocking pins and, consequently, the use of the Carter '896 interlocking pins would not "similarly attach" the reflective element assembly to the mounting bracket in Stewart '878. Indeed, a person of ordinary skill in the art at the time of Applicants' invention, considering fastener systems that would enable a shearing separation of the reflective element assembly to the mounting bracket in Stewart '878, would not consider using the Carter '896 pins.

Finally, the interlocking pins described in Carter '896 would be unusable in Applicants' mirror system, further teaching away from their use. Applicants' disclosure reveals that the interlocking fastener system is incorporated into a pair of rigid plates, i.e. a base plate 32 and a mirror plate 34. The disclosure states "the base plate 32 can be readily separated from the mirror plate 34 by exerting a normal pulling force on the plates 32, 34 sufficient to slide the heads 46, 56 out of the interstitial spaces 48, 58 past each other." *Application, para. [0028], ln. 15-18*. In contrast, Carter '896 discloses that "A straight pull or tension will not cause the two strips of tape to separate. In order to separate the strips, one strip must be peeled away from the other to cause the spherical heads 82 to rotate." *Carter '896, col. 5, ln. 51-57*. Thus, the fastener system of Carter '896 would not work as required for the fastener system of Applicants' invention because the separation mechanism of the Carter '896 system would not provide the separation called for in Applicants' invention. The rejection under 35 U.S.C. §103(a) cannot be supported.

Applicants request withdrawal of the rejection, and the allowance of claims 1-5, 8-23, and 26-37.

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### CONCLUSION

For the reasons discussed above, all claims in the Application are allowable over the prior art of record. Prompt notification of allowability is respectfully requested. If there are any outstanding issues which the Examiner feels may be resolved by way of telephone conference, the Examiner is cordially invited to contact the undersigned to resolve these issues.

Respectfully submitted,

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